

Hearing Date: March 15, 2013 at 10:00 a.m. (ET)

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

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Case No. 12-12020 (MG)

Chapter 11

Jointly Administered

**JOINDER OF DEBTORS TO ALLY FINANCIAL INC'S OBJECTION TO MOTION
OF THE EXAMINER FOR ENTRY OF AN ORDER MODIFYING THE
UNIFORM PROTECTIVE ORDER FOR EXAMINER DISCOVERY**

Debtors submit this limited objection to the Motion Of The Examiner For Entry Of An Order Modifying The Uniform Protective Order For Examiner Discovery [ECF No. 3092] (“the Motion”). In doing so, Debtors join in and incorporate by reference Ally Financial Inc.’s (“AFI”) Objection to the Examiner’s Motion [ECF No. 3155] and request that this Court adopt AFI’s proposed modified amendment to the Uniform Protective Order [ECF No. 1223].

While Debtors do not object to the Examiner’s request for a date-certain for clawback of privileged documents and do not object to the Examiner’s Motion in its entirety, Debtors believe that the objections and modifications raised by AFI are limited, reasonable and necessary to protect all parties’ interests. Most significantly, Debtors agree with AFI that modification of the Protective Order cannot change the obligations imposed by the rules governing discovery of privileged documents. As such, the Debtors request that any modification permit a party to seek leave of Court to make a request for the return of privileged information, even after the proposed deadline for automatic clawbacks has passed.

To date, the Debtors have produced approximately 1 million documents, totaling over 5.2 million pages, much of which was produced in three stages of production. Debtors’ production is ongoing in response to the Examiner’s recent requests for additional custodians and documents. From Phase I and II of production, Debtors clawed back fewer than 100 privileged documents out of 528,296 documents and over 2.4 million pages produced. By agreement with the Examiner, Phase III production was aberrational. There, Debtors agreed to the Examiner’s request that Debtors greatly expedite production, including from the emails of two in-house lawyer custodians, with the understanding that particularly in light of the lawyer custodians, a privilege review likely necessitating extensive clawback would follow. Accordingly, Debtors clawed back 14,000 privileged documents from the almost 300,000 documents and over 2

million pages produced. Because this procedure was agreed upon, there should not have been alleged disruption to the Examiner. *See* Motion [ECF No. 3092], at ¶¶ 4-5.

In sum, other than the Phase III production, in the normal course, Debtors clawback requests have been minimal and should remain minimal. However, as Debtors continue to review documents in connection with witness interviews, substantive submissions and ongoing dialogue with the Examiner, it is likely that a handful of inadvertently produced, privileged documents will be identified and need to be clawed back. Debtors simply request that, as AFI proposes, any modification to the Order allow a party to seek leave of Court to make a request for the return of privileged information if the automatic period has ended.

Accordingly, Debtors do not object to the Examiner's Motion in its entirety, but request that AFI's proposed modifications to the Protective Order amendment be adopted by this Court.

Dated: March 13, 2013

Respectfully submitted,

/s/ Jamie A. Levitt

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